

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN CURWEN,

Plaintiff,

v.

MARK J. DYNAN, et al.,

Defendants.

CASE NO. C11-05598BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
AMEND CASE SCHEDULING
ORDER AND STAY
DISCOVERY PENDING
MEDIATION

This matter comes before the Court on Defendant Gierke Curwen, PS's ("the Firm") motion to amend the case scheduling order and stay discovery pending mediation (Dkt. 29) and Defendant Mark J. Dynan's ("Dynan") motion joining in the Firm's motion (Dkt. 36). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby grants in part and denies in part the motions for the reasons stated herein.

I. PROCEDURAL HISTORY

On August 4, 2011 Plaintiff Susan Curwen ("Curwen") filed her complaint. Dkt. 1. On September 19, 2011, the Firm answered. Dkt. 15. On October 27, 2011, the Firm

1 filed a motion to compel arbitration (Dkt. 17), which was denied by the Court on
2 December 13, 2011 (Dkt. 24). In her complaint, Curwen brings claims against the Firm
3 for discrimination, unlawful retaliation, wrongful termination, outrage, whistleblowing
4 and breach of contract. Dkt. 1 at 4-6. Curwen has agreed to a mediation currently
5 scheduled for May 8, 2012. Dkt. 33 at 4; Dkt. 24.

6 On March 29, 2012, the Firm filed the instant motion seeking to stay discovery
7 until after the mediation, and to amend the case schedule to continue the trial date for five
8 months. Dkt. 29. On April 4, 2012, Curwen responded (Dkt. 33) and on April 6, 2012,
9 the Firm replied (Dkt. 34). On April 7, 2012, Dynan filed a motion joining in the Firm's
10 motion to stay discovery and amend the case schedule. Dkt. 36.

11 **II. FACTUAL BACKGROUND**

12 Curwen formerly worked at the Firm as an office manager but claims that she was
13 "forced to 'retire' by Mr. Dynan and Mr. Conforti, the two individuals who were running
14 the firm." *Id.*; Dkt 20 at 3. Curwen asserts that she was effectively fired by her
15 employers. Dkt. 20 at 3.

16 Discovery in this case has already begun, and is scheduled to be completed by
17 August 13, 2012. Dkt. 33 at 3-4.

18 **III. DISCUSSION**

19 **A. Case Schedule**

20 A case schedule may be modified, but only when the moving party can show good
21 cause. Fed. R. Civ. P. 16(b)(4). The Firm argues that because it "received three months
22 less to prepare the case than it originally requested, and then sought to amicably settle the

1 case with Plaintiff prior to engaging in formal discovery,” the Firm has shown good
2 cause. Dkt. 34 at 3. The Court concludes that the Firm has failed to show good cause.
3 Other than to point out that they originally requested trial start three months later than the
4 December, 2012, date the case schedule reflects, and to argue that they will not be
5 prepared to commence at that time (Dkt 34 at 2-3), the Firm has failed to show good
6 cause for delaying the trial. Though the Firm asserts that Curwen has “not provided a
7 legitimate reason why the case should not be continued,” this erroneously shifts the
8 burden onto the plaintiff when the rule clearly requires the movant to show good cause.

9 Additionally, the Firm argues that the main cause of the delay in their trial
10 preparation has been “time . . . lost trying to work with Plaintiff to resolve the matter
11 through informal discovery and efforts at settlement.” Dkt. 34 at 3-7. While parties are
12 encouraged to resolve disputes on their own, and often do, this does not excuse a party
13 from preparing for set trial dates.

14 **B. Stay of Discovery**

15 Under Rule 26 of the Federal Rules of Civil Procedure, “[p]arties may obtain
16 discovery regarding any nonprivileged matter that is relevant to any party's claim or
17 defense.” Fed. R. Civ. P. 26(b). This principle is subject to limitation. “The court may,
18 for good cause, issue an order to protect a party or person from annoyance,
19 embarrassment, oppression, or undue burden or expense,” including forbidding discovery
20 or specifying terms, including time and place, for discovery. Fed. R. Civ. P. 26(c)(1).
21 Similarly to motions seeking to amend the case schedule, the burden is on the moving
22 party to show good cause by “demonstrating harm or prejudice that will result from the

1 discovery.” *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004). A district court
2 has wide discretion in controlling discovery. *See Little v. City of Seattle*, 863 F.2d 681,
3 685 (9th Cir. 1988).

4 Here, the Firm moves to stay discovery pending mediation to avoid “the prohibitive
5 costs of recent discovery that may be rendered moot by the mediation that is set to occur”
6 on May 8, 2012. Dkt. 29 at 1.

7 The Court concludes that the Firm has shown good cause to justify a stay of
8 discovery pending mediation. A short stay of discovery pending mediation could
9 conserve the resources of the parties and will not impose an inequity on any party. The
10 Firm, in its arguments to stay discovery, points out the quickly approaching deadlines, the
11 anticipated cost and burden of the discovery process, and its optimistic belief that the
12 entire discovery process will be avoided due to the scheduled mediation and potential
13 early resolution of the case. Dkt. 34 at 6-7. Though it is by no means certain that the
14 mediation will successfully resolve the dispute between Curwen and the Firm, staying
15 discovery until May 9, 2012, will cause a delay of no more than a few weeks and will not
16 disadvantage any party.

17 Therefore, the Firm’s motion is granted to the extent that discovery will be stayed
18 pending mediation and denied to the extent that the trial date will not be continued.

19 IV. ORDER

20 Therefore, it is hereby **ORDERED** that the Firm’s and Dynan’s motions to
21 amend the case scheduling order and stay discovery pending mediation (Dkts. 29 & 36)
22

1 are **GRANTED in part** and **DENIED in part** in accordance with the Court's discussion
2 above.

3 Dated this 12th day of April, 2012.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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